



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2004

Ms. Linda R. Frank
Assistant City Attorney
City of Arlington
P.O. Box 90231
Arlington, Texas 76004-3231

OR2004-9570

Dear Ms. Frank:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215847.

The City of Arlington (the "city") received a request for "a copy of [the] code violation reported on 1015 Fiero Dr. [in] August 2004." You claim that the informer's identifying information is excepted from disclosure under section 552.101. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The informer's privilege, incorporated into the Public Information Act by section 552.101, protects the identity of persons who report violations of the law to officials having the duty of enforcing particular laws. *See Roviato v. United States*, 353 U.S. 53, 59 (1957). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing *Wigmore, Evidence*, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a

violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). In addition, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro*, 353 U.S. at 60.

You state that the complaint at issue was filed with the Code Enforcement Office of the City's Neighborhood Services Department and consisted of a report by a citizen of a violation of Articles II, III, and IV of the city's Code of Ordinances. A violation of the ordinances involved is punishable by a fine. We find that the document at issue was a report of a violation of a civil statute made to the administrative officials with the duty of enforcing that statute. Therefore, the informer's identifying information, which you have highlighted, is excepted from required public disclosure by the informer's privilege and section 552.101.

Although you have not raised exception under section 552.130 of the Government Code, we note that the report contains a Texas license plate number. The Office of the Attorney General will raise mandatory exceptions like sections 552.101 and 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Because section 552.130 is a mandatory exception, we raise it on the city's behalf. Section 552.130 excepts from public disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We have marked the Texas license plate number contained in the submitted document. We note, however, that section 552.130 protects personal privacy interests. In this instance, the requestor appears to be the owner of the vehicle to which the license plate number pertains. If so, then the requestor has a special right of access to his own motor vehicle information, and such information may not be withheld from the requestor under section 552.130. *See* Gov't Code § 552.023(a) (a person has a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). If the requestor is not an individual to whom the information in question pertains, then the city must withhold the license plate number under section 552.130. We have marked the document accordingly.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 215847

Enc. Submitted documents

c: Mr. Bobby Wilson
1015 Fiero Drive
Arlington, Texas 76001
(w/o enclosures)